

EXHIBIT

A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

SAMUEL KERSON)
)
) Plaintiff,) Case No.
 v.) 5:20-cv-202
)
VERMONT LAW SCHOOL,)
) Defendants.)

DEPOSITION
OF
EMILY PHILLIPS
Taken via Zoom on July 29, 2021 at 10:03 AM

APPEARANCES:

STEVEN HYMAN, ESQ., McLaughlin & Stern, 260
Madison Avenue, New York, NY 10016;
and
RICHARD RUBIN, ESQ., Rubin Kidney Myer & Vincent,
237 North Main Street, Suite 3, Barre,
Vermont; on behalf of the Plaintiff.

JUSTIN BARNARD, ESQ., Dinse, P.O. Box 988,
Burlington, Vermont; on behalf of the
Defendant.

REPORTER: Sherri L. Bessery, RMR, CRR

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Page 2	Page 3
<p>1</p> <p>2 INDEX</p> <p>3 Witness Page</p> <p>4 Emily Phillips ----- 3</p> <p>5 Examination by Mr. Barnard ----- 3</p> <p>6 Examination by Mr. Rubin ----- 69</p> <p>7 Re-Examination by Mr. Barnard ----- 71</p> <p>8</p> <p>9 Exhibit Identified</p> <p>10 1 - Notice of Deposition 16</p> <p>11 2 - Declaration 21</p> <p>12</p> <p>13 ***THIS TRANSCRIPT CONTAINS REQUESTS FOR INFORMATION.10</p> <p>14 SEE PAGE 18, LINE 14; PAGE 19, LINE 13.***</p> <p>15</p> <p>16</p> <p>17 ***</p> <p>18 IT IS HEREBY STIPULATED AND AGREED BY</p> <p>19 AND between counsel that notice of the taking</p> <p>20 of the deposition has been given; that</p> <p>21 qualifications of the Notary Public shall be</p> <p>22 waived and that the witness may be sworn</p> <p>23 remotely; and that all objections except as</p> <p>24 to the form of the question shall be reserved</p> <p>25 to the time of trial.</p> <p>***</p>	<p>1 EMILY PHILLIPS,</p> <p>2 having been duly sworn by the Notary</p> <p>3 Public, testified as follows:</p> <p>4 EXAMINATION BY MR. BARNARD:</p> <p>5 Q. Good morning again.</p> <p>6 Could you state your full name for the</p> <p>7 record, please?</p> <p>8 A. My full name is Emily Gardner Phillips.</p> <p>9 Q. And for purposes of today's deposition,</p> <p>10 would you prefer Emily or Ms. Phillips?</p> <p>11 A. You can go by Emily; I'm okay with it.</p> <p>12 Q. Okay.</p> <p>13 Can you state your business address,</p> <p>14 please?</p> <p>15 A. I am currently located at 10 Elm Street in</p> <p>16 Essex, New York.</p> <p>17 Q. Just across the lake from Vermont.</p> <p>18 A. I am; yes.</p> <p>19 Q. So have you been deposed before, Emily?</p> <p>20 A. No.</p> <p>21 Q. Okay. So let me just give you a couple</p> <p>22 ground rules to help this go smoothly.</p> <p>23 It's especially important, given that</p> <p>24 we're doing this over zoom, if we are talking at</p> <p>25 the same time it will be very difficult for</p>
Page 4	Page 5
<p>1 Sherri to write down a complete and accurate</p> <p>2 transcript. So I'd ask that you wait for me to</p> <p>3 get out questions fully, and sometimes I take my</p> <p>4 time, before responding so that we're not talking</p> <p>5 at the same time.</p> <p>6 If I ask you a question you don't</p> <p>7 understand, which is sure to happen over the next</p> <p>8 hour or so, please just ask me for clarification.</p> <p>9 A. Okay.</p> <p>10 Q. And if you don't ask me for clarification,</p> <p>11 I'll assume that you understood that. Is that</p> <p>12 fair?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. You need to give verbal responses;</p> <p>15 yes, no, or narrative responses.</p> <p>16 And if you need a break at any time, just</p> <p>17 say the word and we can take a break.</p> <p>18 A. Okay.</p> <p>19 Q. Okay?</p> <p>20 A. Yep.</p> <p>21 Q. Could you just start by describing your</p> <p>22 educational and professional background generally</p> <p>23 to me?</p> <p>24 A. I believe you've received my CV as part of</p> <p>25 my declaration. I entered the field of art</p>	<p>1 conservation approximately 19 years ago; seems</p> <p>2 wild.</p> <p>3 Kind of the, the normal track as to work,</p> <p>4 prior to developing experience, prior to doing a</p> <p>5 graduate program.</p> <p>6 I entered into a graduate program at</p> <p>7 Buffalo State College; one of only a handful in</p> <p>8 the U.S., that specialize in a Master's degree in</p> <p>9 Art Conservation, and completed that in 2008.</p> <p>10 Relocated back to where I am originally</p> <p>11 from, this area, the Champlain Valley, and</p> <p>12 established my, my private practice, Phillips Art</p> <p>13 Conservation Studio. And have been working as</p> <p>14 the principal conservator in that role since</p> <p>15 then.</p> <p>16 Q. So I've never had occasion to talk to an</p> <p>17 art conservationist. Can you just briefly</p> <p>18 describe the type of course work that you had to</p> <p>19 complete for your, your graduate program?</p> <p>20 A. Yep. So we go by conservator. I know</p> <p>21 that there's a lot of exchange of that name</p> <p>22 between law, legal and art world, but anyways.</p> <p>23 I'm sorry; could you repeat the question</p> <p>24 again, because I got stuck on art</p> <p>25 conservationist.</p>

Page 6	Page 7
<p>1 Q. Sorry; and I will try to be more precise.</p> <p>2 A. That's okay.</p> <p>3 Q. So can you describe the course work that</p> <p>4 you have to complete to --</p> <p>5 A. Sure.</p> <p>6 Q. -- do that?</p> <p>7 A. Yeah. So I mean typically there's</p> <p>8 several, I mean there's two major tracks of</p> <p>9 getting into this field.</p> <p>10 One is the more traditional way of</p> <p>11 apprentice training; so working under mentors,</p> <p>12 you know, for a very long period of time, really</p> <p>13 just in a, in a learning capacity.</p> <p>14 And then there's this more I guess formal</p> <p>15 and leaning towards the more accepted version of</p> <p>16 our training, which is to go through a graduate</p> <p>17 program. That involves two years of course work</p> <p>18 with a third year internship or fellowship, with</p> <p>19 summer internships interspersed into that. So</p> <p>20 both hands-on, mostly hands-on work, but also the</p> <p>21 course work, at least where I went through the</p> <p>22 Master's program.</p> <p>23 They're all, they're all about the same;</p> <p>24 but you're still just being exposed to all</p> <p>25 various aspects of art conservation. So while</p>	<p>1 you might be on a track to become a painting</p> <p>2 conservator, we also learn all of the</p> <p>3 fundamentals of, you know, paper, manufacturing</p> <p>4 and paper, basic paper conservation principles,</p> <p>5 photographs, objects, sculpture, you know, glass</p> <p>6 basket, archeological epigraphics. So that we</p> <p>7 really become more cross-disciplinary and</p> <p>8 understand when there are projects that come</p> <p>9 before us we either, you know, know our</p> <p>10 limitations or we know basic principles of that</p> <p>11 and how to, and how to deal with, you know, that</p> <p>12 I hope that explains kind of the basics of</p> <p>13 the training process that I went through.</p> <p>14 Q. That does. I have a couple followup</p> <p>15 questions.</p> <p>16 But it sounds like what you were just</p> <p>17 describing is gaining familiarity with the media</p> <p>18 and materials used in various types of artwork</p> <p>19 and the means to conserve them; is that fair?</p> <p>20 A. Yeah. I mean, and it involves, I, I like</p> <p>21 to describe it as a three-legged stool; there's</p> <p>22 an art historical core to it, there's a</p> <p>23 scientific analytical core to it, and then there</p> <p>24 is a studio component to it.</p> <p>25 So really having those three strengths as,</p>
Page 8	Page 9
<p>1 as a training conservator are, are really, I</p> <p>2 mean, basic and, and just the principles of what</p> <p>3 most of us would be operating under.</p> <p>4 Q. You mentioned scientific principles. Do</p> <p>5 you as part of your graduate work take lab</p> <p>6 courses in particular scientific disciplines?</p> <p>7 A. Oh, yeah. I had an engineering track</p> <p>8 before going into conservation, so I had to go</p> <p>9 back and take a lot of organic chemistry. And we</p> <p>10 are at, at the graduate program, and I think all</p> <p>11 of them do this now, and some are more heavier</p> <p>12 than others in science, but really understanding</p> <p>13 the analytical testing techniques that are</p> <p>14 available to us; understanding how to, you know,</p> <p>15 read XRF and, and various testing methods to</p> <p>16 determine whatever you're, you know, whatever</p> <p>17 you're seeking out when you're examining or</p> <p>18 researching artwork of any nature.</p> <p>19 Q. Thank you; that's helpful.</p> <p>20 A. Yep.</p> <p>21 Q. So I believe you said that between the two</p> <p>22 paths to become an art conservator, the, call it</p> <p>23 maybe the apprenticeship model and the graduate</p> <p>24 program model, there is, there is a growing</p> <p>25 acceptance of the, or predominance of the</p>	<p>1 graduate school path; is that correct?</p> <p>2 A. I think it's just becoming more expected</p> <p>3 that most everybody in this generation in the</p> <p>4 field of conservation will, I don't want to say</p> <p>5 be required to, but it's just becoming standard</p> <p>6 practice to have a graduate degree in this field.</p> <p>7 And there now are even, you know, Ph.D.</p> <p>8 tracks if you want to specialize in more in depth</p> <p>9 analytical research of specific artists or</p> <p>10 aspects of, of the field.</p> <p>11 Q. But you do not need a graduate degree to</p> <p>12 serve as an art conservator?</p> <p>13 A. No.</p> <p>14 Q. Okay. Is there any sort of body, either a</p> <p>15 professional body or a state or national</p> <p>16 governmental entity, that licenses art</p> <p>17 conservators?</p> <p>18 A. There is not a licensing process, no.</p> <p>19 Q. Is there a certification process?</p> <p>20 A. No.</p> <p>21 Q. Okay. So someone could go hang out a</p> <p>22 shingle and call themselves an art conservator</p> <p>23 and there are no professional regulated standards</p> <p>24 for practicing in the field; is that fair?</p> <p>25 A. Yes. I would say right now this is</p>

3 (Pages 6 to 9)

Page 10	Page 11
<p>1 currently a very hot topic in our, in our 2 membership. I am, there is a professional 3 organization within the United States called the 4 American Institute For Conservation, I am a 5 member of that, I have been since I got into this 6 field 19 years ago. There is not a -- there was 7 an attempt to have a certification process that 8 was voted down by members several years ago. 9 There is a peer-reviewed status, and I 10 think I included this in my declaration. It's, 11 you know, a process by which you submit letters 12 of recommendation, support documents from 13 colleagues, and that is reviewed by a body of 14 fellow conservators and they determine, you know, 15 what your competency is as a conservator to then 16 be qualified as a Professional Associate. 17 Q. Is that under the auspices of any 18 professional organization? 19 A. That would be under the American Institute 20 For Conservation. Which is kind of, I mean I 21 don't want to say it's similar to AIA because 22 they do have a certification, licensing process, 23 with architects; but that would be like my, like 24 my professional parent affiliation. 25 Q. So tell me what sorts of work you do in</p>	<p>1 your current art conservation business, what 2 sorts of services you offer. 3 A. I -- it's, it's wide ranging. I deal with 4 both private collections, individual projects, to 5 working with the federal contractor system. I 6 have been in contracts through the National Park 7 Service and the Department of Interior for about 8 five or six years now. Working with the 9 University Library, it's not just, you know, just 10 specifically painting conservation projects; but 11 if a painting is going to be loaned to another, 12 an institution, I do condition reports looking at 13 the condition of those artworks before they leave 14 and travel and go to another institution. 15 I think I -- it's, it's kind of very 16 broad; yeah. 17 Q. Okay. And you mentioned that you're under 18 contract currently to restore a couple of large 19 paintings for the National Park Service; can you 20 tell me about that? 21 A. This is with Lowell National Historic Site 22 in Lowell, Massachusetts. The contract is to 23 conserve both paintings and frames by artist John 24 Coggeshall. They are about 3 to 4 feet by 8 to 25 10 feet in length, and the work it to be done on</p>
Page 12	Page 13
<p>1 site in Lowell. 2 Q. Okay. But these are, these are framed 3 paintings, not murals; correct? 4 A. I mean, they're large scale paintings, 5 yes. They're oil on canvas on stretchers in 6 frames, yes. 7 Q. And what, what sort of conservation work 8 are you doing there? Has there been damage over 9 time? 10 A. Yeah; mostly dealing with bad restoration 11 from years past and making them look presentable. 12 Q. Have you had occasion to restore paintings 13 that have been damaged by water or mold before? 14 A. Um-hum. 15 Q. Tell me, tell me a little bit about your 16 experience there. 17 A. The mold damage, I mean it comes up, you 18 know, on a, on various projects. 19 But specifically one artist's study in 20 Jersey City had flooded, I think the fire 21 sprinkler system had set off, dampening 22 everything in the building. When I came to the 23 artwork, the mold was, had grown so substantially 24 I actually had thought that the back of the 25 painting might have been the actual painting it</p>	<p>1 was so pronounced and I had never seen mold that 2 grow that much. I guess that's one example of 3 that I think. 4 And then as far as water damage, I think 5 the most, or, or damage to a paint layer from 6 water, couple of things. One, when I first got 7 into the field I was hired on as a conservation 8 technician for a very large scale mural project 9 in Boston at Trinity Church. These were a cycle 10 of murals by John LaFarge, done in the Trinity 11 Episcopal Church. These were both, mostly in 12 caustic, which is wax and pigmented -- pigment in 13 a wax resin applied directly onto a plaster wall. 14 The problem with that building was water 15 was infiltrating through the masonry from the 16 exterior wall and causing the paint then to start 17 detaching from the wall. So in our conservation 18 terminology, we would call that consolidation; so 19 paint flaking. You introduce an adhesive; and 20 then by that means you're then consolidating the 21 paint back onto the substrate or the support the 22 painting is carried out on. 23 Q. And do you know how old the Trinity Church 24 was? 25 A. I believe 1860, 1870, I believe, maybe</p>

4 (Pages 10 to 13)

Page 14	Page 15
<p>1 1880; somewhere around there.</p> <p>2 Q. So a fairly old building.</p> <p>3 A. I guess by art standards, yes. When I</p> <p>4 share this with my European colleagues they laugh</p> <p>5 at how young we really are, you know, just a</p> <p>6 couple centuries old compared to their four or</p> <p>7 five hundred year old stuff.</p> <p>8 Q. Sure.</p> <p>9 Just to go back to the mold you were</p> <p>10 describing in the Jersey City studio. Can you</p> <p>11 just walk me through how you address mold damage</p> <p>12 and what the end product was in that case?</p> <p>13 A. So mold is quite complex, in that it</p> <p>14 really is on pretty much every surface; it just</p> <p>15 will require a special mix of, you know,</p> <p>16 moisture, darkness and a little bit of warmth to</p> <p>17 encourage growth.</p> <p>18 This mold was quite developed. This was</p> <p>19 a, I want to say acrylic or oil on canvas</p> <p>20 painting. Everything would have been determined</p> <p>21 what material the artists were using to construct</p> <p>22 this; that's, you know, the basis of the first</p> <p>23 steps in the conservation, as well as documenting</p> <p>24 all that work.</p> <p>25 So in that case, using, also the safety of</p>	<p>1 myself, wearing a HEPA respirator; I think I</p> <p>2 might even been wearing a full Tyvex suit and</p> <p>3 gloves. Mechanically removing the mold from the</p> <p>4 surface using a HEPA filtration vacuum; and then</p> <p>5 going back in and applying an alcohol, ethanol</p> <p>6 with water solution to inhibit the growth of mold</p> <p>7 again.</p> <p>8 I mean, once it's sort of grown, it's</p> <p>9 really hard to get it to not want to come back.</p> <p>10 And so the only real steps that you have after</p> <p>11 that is to continue with visually monitoring the</p> <p>12 artwork and keeping it in a controlled</p> <p>13 environment at that point in order to make going</p> <p>14 forward recommendations.</p> <p>15 Q. Okay. So there's an ongoing risk of</p> <p>16 reoccurrence that were you able in that case to</p> <p>17 more or less fully remediate the mold damage to</p> <p>18 the works?</p> <p>19 A. I wouldn't say -- I mean, fully remediate</p> <p>20 to the point that it was visually not, you know,</p> <p>21 there was no signs, signs of any more bloom or</p> <p>22 any more growth of the mold. It's been a few</p> <p>23 years; I might want to, I might check that, so</p> <p>24 yeah.</p> <p>25 Q. Okay. But at the time to an observer, it</p>
Page 16	Page 17
<p>1 would look more or less as it did before the mold</p> <p>2 set in; is that fair to say?</p> <p>3 A. No. Actually the mold caused quite a lot</p> <p>4 of damage in that it, it really worked itself</p> <p>5 into the surface of the paint layer, and so there</p> <p>6 was a shift in the visual appearance of the</p> <p>7 artwork. The mold caused some staining; and that</p> <p>8 was not something that I, that was, was</p> <p>9 reversible, no.</p> <p>10 Q. Okay. Have you previously been hired to</p> <p>11 serve as an expert in any legal cases?</p> <p>12 A. No.</p> <p>13 Q. So I want to have you look at what I've</p> <p>14 sent to you and what will be marked Deposition</p> <p>15 Exhibit 1.</p> <p>16 A. Um-hum.</p> <p>17 Q. It's a Notice of Deposition that we sent</p> <p>18 to the attorneys for Sam Kerson. Have you</p> <p>19 reviewed this document?</p> <p>20 A. Yes, I have.</p> <p>21 Q. Okay. The Notice of Deposition contains</p> <p>22 certain document requests, and I just want to run</p> <p>23 through these with you quickly to confirm that no</p> <p>24 responsive documents exist. I understand from</p> <p>25 Mr. Kerson's attorneys that there were no further</p>	<p>1 documents to provide; but we'll just run through</p> <p>2 and verify that.</p> <p>3 A. Sure.</p> <p>4 Q. So we asked, number 1, for your complete</p> <p>5 file pertaining to work conducted by you in this</p> <p>6 matter.</p> <p>7 Can you explain what, if any, documents</p> <p>8 you maintain concerning your work for Mr. Kerson?</p> <p>9 A. The file, I guess the documents, would</p> <p>10 have been the, I think the list of documents that</p> <p>11 were sent to me, the Hecht Declaration; all of</p> <p>12 the documents that would have provided me some</p> <p>13 content into the, into the matter so that I could</p> <p>14 look at it, I can't think of all the people that</p> <p>15 were interviewed, but all of the, all of the</p> <p>16 documentation as well, yeah.</p> <p>17 Q. So the filings with the court.</p> <p>18 A. Yes; thank you.</p> <p>19 Q. Did -- have you created any notes or</p> <p>20 internal memos in the course of conducting your</p> <p>21 work?</p> <p>22 A. No.</p> <p>23 Q. Okay. And you haven't drafted, other than</p> <p>24 your affidavit, which we'll get to, you haven't</p> <p>25 drafted a report; correct?</p>

5 (Pages 14 to 17)

Page 18	Page 19
<p>1 A. Correct.</p> <p>2 Q. Okay. Have you received any e-mails from</p> <p>3 Mr. Kerson's attorneys in which they have</p> <p>4 described any of the background facts of the</p> <p>5 case?</p> <p>6 A. Like their own personal statements or --</p> <p>7 Q. Any e-mails in which, or letters, in which</p> <p>8 they provided you facts for consideration or for</p> <p>9 background.</p> <p>10 A. I would say yes.</p> <p>11 Q. Okay.</p> <p>12 A. If that would be included with what we</p> <p>13 were talking about, the legal documents, sure.</p> <p>14 Q. Okay. After the deposition's complete, I</p> <p>15 will want to have you look back through your</p> <p>16 e-mails; and if there are e-mails in which you</p> <p>17 have been provided facts by Mr. Kerson's</p> <p>18 attorneys, we would ask that you provide them to</p> <p>19 Mr. Kerson's attorneys to turn over to us.</p> <p>20 A. Okay.</p> <p>21 MR. RUBIN: Justin, we don't have a</p> <p>22 problem with that. To the extent we</p> <p>23 provided background and factual information,</p> <p>24 we'll provide it to you.</p> <p>25 MR. BARNARD: Thank you.</p>	<p>1 MR. RUBIN: As opposed to conversations</p> <p>2 or colloquies about the work or work</p> <p>3 product. But direct factual information, no</p> <p>4 problem.</p> <p>5 MR. BARNARD: Okay.</p> <p>6 Q. Have you reviewed any third party</p> <p>7 publications or reports or textbooks in your work</p> <p>8 in this matter?</p> <p>9 A. No; no.</p> <p>10 I think the, the only thing that I may</p> <p>11 have reference to was just for the content of the</p> <p>12 Oddy test results was like an online Wiki that we</p> <p>13 use for, you know, this type of research. And I</p> <p>14 can provide you with that website and link.</p> <p>15 Q. Sure. Do you have it handy, or do you</p> <p>16 want to send it through Mr. Kerson's attorneys</p> <p>17 after the deposition?</p> <p>18 A. I can send it to Steve and Rich.</p> <p>19 Q. That's fine.</p> <p>20 And lastly, number 10 in our deposition</p> <p>21 notice, any invoices, bills and statements of</p> <p>22 service for your work in this litigation, or</p> <p>23 e-mails related to compensation.</p> <p>24 A. No.</p> <p>25 Q. Okay. Now I understand that you are not</p>
Page 20	Page 21
<p>1 charging Sam Kerson for your time on this case?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And you are charging Vermont Law</p> <p>4 School for your time today; correct?</p> <p>5 A. I believe that was the arrangement of the</p> <p>6 deposition, but yes; correct.</p> <p>7 Q. Yeah, okay. And what's your rate?</p> <p>8 A. 150 an hour.</p> <p>9 Q. Tell me why you are working on this case</p> <p>10 for Mr. Kerson for free.</p> <p>11 A. I, I, I'm not -- I don't know really how</p> <p>12 to answer that.</p> <p>13 Q. Is it because you believe in his cause?</p> <p>14 A. I think it, it's, it's, you know, belief</p> <p>15 in having a professional provide some content</p> <p>16 and, and look at this from a conservation/</p> <p>17 preservation point of view, yeah; sure.</p> <p>18 Q. Let me put this a different way. If, if</p> <p>19 we were talking about a large scale mural</p> <p>20 celebrating the confederacy and there was a</p> <p>21 proposal to cover it, would you be inclined to</p> <p>22 offer your services for free in that case?</p> <p>23 A. Oh, sure. I mean, I, I -- the content of</p> <p>24 the artwork is not relevant to me as a</p> <p>25 professional. We are really trained right off</p>	<p>1 the bat that that is not part of the</p> <p>2 precipitating reason why we are in this field; so</p> <p>3 I would be doing this regardless of the content.</p> <p>4 It was reached out by, from a colleague of</p> <p>5 mine to consider providing my opinions on this.</p> <p>6 We have, as you I'm sure are aware in the legal</p> <p>7 world, you know, I don't, I don't want to say a,</p> <p>8 to do things pro bono always, but I mean when</p> <p>9 they, when the opportunity arises to provide</p> <p>10 professional guidance and support and there is</p> <p>11 the inability to compensate, I, I will do that.</p> <p>12 I think we are, we are all rooted in that as</p> <p>13 professionals in this field.</p> <p>14 Q. Okay. So your decision to do this work</p> <p>15 for free had nothing to do with your views on the</p> <p>16 merits of the artwork?</p> <p>17 A. No.</p> <p>18 Q. Okay. So I would have you, if you don't</p> <p>19 have it out before you, just look at what I've</p> <p>20 been, I've provided as Deposition Exhibit 2,</p> <p>21 which is a Declaration that was signed by you and</p> <p>22 submitted in this case. Do you have that in</p> <p>23 front of you?</p> <p>24 A. Yep.</p> <p>25 Q. Okay. Does this Declaration fully</p>

Page 22	Page 23
<p>1 describe your opinions at this time?</p> <p>2 A. Yep; yes. At this time, yes.</p> <p>3 Q. You've had no occasion to develop further</p> <p>4 opinions on the proposal to cover Mr. Kerson's</p> <p>5 mural since you signed this affidavit?</p> <p>6 A. No.</p> <p>7 Q. Now your affidavit described factors that</p> <p>8 need to be considered in determining whether the</p> <p>9 proposed wall complies with recognized art</p> <p>10 conservation practices; is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. So your opinion in this case addresses the</p> <p>13 issue of whether the proposal to cover the mural</p> <p>14 will comply with recognized art conservation</p> <p>15 practices; correct?</p> <p>16 A. Yeah. I don't -- I'm stuck on the word</p> <p>17 comply. Sure; yeah.</p> <p>18 Q. How would you put it?</p> <p>19 A. I think, no, comply is a good word.</p> <p>20 Q. How about will comport with --</p> <p>21 A. Sure.</p> <p>22 Q. -- good practices --</p> <p>23 A. Yes.</p> <p>24 Q. -- in the art conservation field?</p> <p>25 A. Yes.</p>	<p>1 Q. What materials, other than the filings in</p> <p>2 this case, did you review in preparing your</p> <p>3 opinion? You referenced a Wiki on the Oddy test.</p> <p>4 A. Um-hum.</p> <p>5 Q. Were there any other materials you looked</p> <p>6 at?</p> <p>7 A. Any other materials that I looked? Can</p> <p>8 you just repeat that again? Sorry.</p> <p>9 Q. Sure. What materials did you review in</p> <p>10 preparing this affidavit and your opinions in</p> <p>11 this matter?</p> <p>12 A. Materials pertaining to the construction</p> <p>13 of the artwork and the proposed materials to be</p> <p>14 used to cover that, or -- is that what you're --</p> <p>15 Q. I just want to know what, what you</p> <p>16 considered. You described -- let me put it this</p> <p>17 way. You've described having looked at various</p> <p>18 filings that have been made in this legal case.</p> <p>19 A. Yes.</p> <p>20 Q. At a Wiki page on the Oddy test protocols.</p> <p>21 Was there anything else, any other documents or</p> <p>22 materials that you consulted in forming your</p> <p>23 opinions?</p> <p>24 A. No. I mean, other than I think the</p> <p>25 conversation that I had with Mr. Kerson about</p>
Page 24	Page 25
<p>1 his, you know, artist's working methods and</p> <p>2 materials, no.</p> <p>3 Q. Did you talk to Mr. Kerson on multiple</p> <p>4 occasions or just once?</p> <p>5 A. Just once.</p> <p>6 Q. Okay. And what do you recall discussing</p> <p>7 with him?</p> <p>8 A. Specifically about the materials that he</p> <p>9 used to construct this mural; how he layers, you</p> <p>10 know, the type of paints that he's using, how</p> <p>11 he's working, you know, with a brush, what his</p> <p>12 intention is as an artist, with the life of his</p> <p>13 artwork, the type of surface that he is working</p> <p>14 to achieve. Some artists like a very mat, flat</p> <p>15 surface, some like very shiny surfaces; very</p> <p>16 specific I guess nuances or preferences each</p> <p>17 artist has. Just basically that context for me</p> <p>18 to understand how the Vermont Law School mural</p> <p>19 was constructed.</p> <p>20 Q. Tell me what you recall about the</p> <p>21 materials he used in constructing the mural.</p> <p>22 A. Pretty simple. I mean, he was using</p> <p>23 custom-made, working with paint company call</p> <p>24 Guerra, I think that's been mentioned; they're</p> <p>25 out of New York City.</p>	<p>1 He is painting directly onto a prepared</p> <p>2 drywall support. I think it's, you know, very</p> <p>3 standard construction of a mural of this type.</p> <p>4 That's about all that I gathered from that.</p> <p>5 Q. Okay. You referenced a finish of the</p> <p>6 work?</p> <p>7 A. Um-hum.</p> <p>8 Q. What do you recall about the finish he was</p> <p>9 trying to achieve?</p> <p>10 A. I, from what I recall, I think the surface</p> <p>11 has a slight sheen to it. I wouldn't call it</p> <p>12 overly shiny. You know, the colors that he uses</p> <p>13 are very, are very vibrant, very bright. I'm not</p> <p>14 sure what the specific pigments, you know, are</p> <p>15 that he's using. But, you know.</p> <p>16 Q. In your affidavit it says you conducted</p> <p>17 related research relevant to the circumstances</p> <p>18 presented here. Can you tell me what research</p> <p>19 you conducted?</p> <p>20 A. In relationship to this, to this mural?</p> <p>21 Q. Yes.</p> <p>22 A. I think just what I have shared; just</p> <p>23 discussing with him an understanding of the type</p> <p>24 of paints that he's using.</p> <p>25 We also do that so we understand, if there</p>

7 (Pages 22 to 25)

Page 26	Page 27
<p>1 were to be any future conservation, you know, 2 materials that we choose as a conservator ought 3 not to affect or impact the artist's original. 4 So acrylics are really sensitive to a whole range 5 of solvents and other solutions that I would just 6 have to rule out using them; if, if this was like 7 a conservation project, you know, if I was 8 looking at this from a, you know, surface 9 cleaning and that kind of thing. And I think the 10 other, I think that would be the other research. 11 And then just as far as this acoustic tile 12 component, it was an unknown to me; and so I, 13 looking into that a little bit more as to what 14 that was being proposed to use to cover over the 15 mural. 16 Q. And is the reason you inquired about the 17 materials and finish that the vulnerability of a 18 work to environmental damage will depend in part 19 upon the materials that are used? 20 A. Oh, sure; absolutely. It's all -- yes. 21 Q. Okay. And is there anything about the way 22 in which this mural was painted and finished that 23 makes it particularly vulnerable to environmental 24 damage or -- 25 A. I, one major red flag for me immediately</p>	<p>1 is that these are painted on exterior walls. By 2 that nature you're incurring the possibility of a 3 lot of different shifts in temperature, humidity, 4 moisture infiltration into that wall from, I mean 5 because we have very cold, you know, winters and 6 very hot, humid summers, and exterior walls can 7 cause all sorts of factors to be, to present 8 themselves. 9 Q. Sure. And I, we'll get into that a little 10 bit as we go along. 11 But as to the materials themselves, are 12 the paint and the method used fairly standard for 13 murals? 14 A. Yes, I would say they are. 15 Q. So there's nothing about the materials 16 used that makes them particularly vulnerable to 17 environmental damage here; correct? 18 A. I don't think so, no. 19 Q. Okay. Can you describe your understanding 20 of what the plan is for covering the mural? 21 A. It's my understanding that the proposal is 22 to mount around the perimeter of the painting 1x4 23 pieces of wood frame at the, the mural; and then 24 adding vertical members onto that that then these 25 acoustic, Acoustimac panels then would be</p>
Page 28	Page 29
<p>1 attached and mounted to. 2 Q. You are not giving an opinion here that 3 the actual installation of the cover will harm 4 the mural; correct? 5 MR. RUBIN: Objection. 6 A. I mean, it -- 7 MR. RUBIN: I'm not sure the question 8 is technically correct. Objection. Go 9 ahead. 10 Q. Do you have an opinion as to whether the 11 installation of the cover, as opposed to the 12 long-term risks posed by the cover, will have an 13 impact on the mural? 14 A. You're saying like the actual application 15 of the, of this? 16 Q. Correct. 17 A. Versus it being applied and then what it 18 would look like long term? 19 Q. Yes. 20 A. I mean, any time I think you have, you 21 have any construction going on in front of a 22 artwork there is, there is the opportunity for 23 risk and damage, sure; I wouldn't rule it out. 24 Q. There is an opportunity for risk or 25 damage; but is it your opinion that it is more</p>	<p>1 likely than not that merely installing this cover 2 will harm the mural? 3 A. I can't speak to that; I, I haven't -- 4 Q. You cannot offer an opinion that it is 5 more likely than not that there will be immediate 6 harm to the work because of installation of the 7 cover? 8 A. I don't think I can speak to what, you 9 know, the contractor or whomever would be doing 10 the work. That would be I would say an opinion 11 on their capabilities; and I, I wouldn't want to 12 have an opinion on that. 13 Q. Okay. So just to be absolutely clear; you 14 are not offering an opinion on that issue, on 15 whether the installation of the cover itself will 16 in fact immediately cause harm to the mural? 17 A. If, if you're asking for certainty, I 18 cannot provide that. I would say it would just 19 be an assumed potential greater risk for it. 20 Q. Okay. But do you have any reason to 21 believe that risk arises to a level that is 22 greater than 50 percent? 23 A. Oh, I, I don't; I can't make that 24 assumption, no. 25 Q. Okay. So you are not offering an opinion</p>

Page 30	Page 31
<p>1 that it is more likely than not that installing</p> <p>2 the cover will --</p> <p>3 A. I guess I will not offer an opinion on</p> <p>4 that, no.</p> <p>5 Q. Thank you. So your opinion is that the</p> <p>6 proposed covering does not comport with best</p> <p>7 practices in the art conservation field; is that</p> <p>8 fair?</p> <p>9 A. I would say that's a fair, a fair</p> <p>10 representation of that, yes.</p> <p>11 Q. I want to walk through the reasons you</p> <p>12 give in your affidavit why that's so.</p> <p>13 And start with the acoustic tiles. You</p> <p>14 raise a concern that the acoustic tiles have not</p> <p>15 been tested under the Oddy test protocols. Can</p> <p>16 you explain what those are?</p> <p>17 A. I think I just generally stated that the</p> <p>18 acoustic panels are not a material familiar to</p> <p>19 the use in our field when it comes to being in</p> <p>20 close contact to an artwork.</p> <p>21 So Oddy tests are one analytical tool in</p> <p>22 determining whether or not a material could have</p> <p>23 some detrimental effect on an artwork. We do</p> <p>24 this with, you know, everything; paints, fabric,</p> <p>25 any, any type of construction material. This is</p>	<p>1 -- yes, so I said that.</p> <p>2 Q. I understand that's the end goal of the</p> <p>3 Oddy test. I want to understand more what is</p> <p>4 involved. You break down a material and subject</p> <p>5 it to chemical testing?</p> <p>6 A. In this case, the Oddy test is a test by</p> <p>7 which you could either pull out individual</p> <p>8 components of this, say, acoustic tile, or look</p> <p>9 at it as its entirety. You, by using metal</p> <p>10 coupons made of copper, lead and silver, you</p> <p>11 place that material into a container, seal it,</p> <p>12 you have a controlled, a control, which is same</p> <p>13 metal coupons without anything in it.</p> <p>14 You basically set it, you know, on the</p> <p>15 counter and then let 30 days, approximately, go</p> <p>16 by; and then if there's any effect shown on the</p> <p>17 metal coupons, then it would suggest that there</p> <p>18 are off-gassing or some sort of material that's</p> <p>19 either degrading or part of the construction of</p> <p>20 that material that is negatively impacting those</p> <p>21 metal coupons.</p> <p>22 So for instance, and I, and I hope I don't</p> <p>23 get this messed up, but like say if the copper</p> <p>24 starts to discolor, or tarnish, sorry, it could</p> <p>25 be considered that there's sulphur off-gassing</p>
Page 32	Page 33
<p>1 out of that material. So there's a whole</p> <p>2 database of existing materials that have been</p> <p>3 tested. And when they start to show those,</p> <p>4 exhibit that type of result, we would, we would</p> <p>5 seriously consider whether or not that could then</p> <p>6 cause any further damage to the artwork that it</p> <p>7 would be in close proximity to.</p> <p>8 Q. And is there a -- when you identify a</p> <p>9 risk, when there is a change to the metal coupons</p> <p>10 that are enclosed with the materials, is there a</p> <p>11 further step where you analyze the particular</p> <p>12 gasses that have been generated? Or is it just a</p> <p>13 flag for a potential concern?</p> <p>14 A. I think it's, you know, you could do both;</p> <p>15 you could look at it at both. But I mean, I</p> <p>16 think there's certainly, this is certainly just</p> <p>17 one, one type of testing technique that's</p> <p>18 available. I think this is kind of the baseline</p> <p>19 that you start with. And if, you know, you want</p> <p>20 to continue down further exploring the specifics</p> <p>21 of why that material is presenting these test</p> <p>22 results, I think those options would be available</p> <p>23 to you.</p> <p>24 Q. Is the Oddy test something that you</p> <p>25 conduct yourself, or would you send it off to a</p>	<p>1 specialist?</p> <p>2 A. No, they're really made to be pretty</p> <p>3 available for most conservators; there's not any</p> <p>4 really special equipment that would be used. So</p> <p>5 it's, it's really made to be available for most</p> <p>6 any colleague practicing, whether they're in an</p> <p>7 institution or in private practice; it's not</p> <p>8 prohibitive.</p> <p>9 Q. So your concern with the acoustic tiles</p> <p>10 here is that they have not been subjected to any</p> <p>11 sort of testing so you do not have information on</p> <p>12 how they might affect the mural; is that fair?</p> <p>13 A. Yep; yes.</p> <p>14 Q. You haven't yourself obtained one of these</p> <p>15 tiles and tested it; correct?</p> <p>16 A. No.</p> <p>17 Q. You also raise a concern with permeability</p> <p>18 of the tiles. Can you explain the concern there?</p> <p>19 A. The permeability in what respect?</p> <p>20 Q. Let me read from your Declaration.</p> <p>21 A. Yep.</p> <p>22 Q. Nor can I determine the permeability of</p> <p>23 the panels and how they will allow for proper</p> <p>24 airflow.</p> <p>25 MR. RUBIN: What paragraph, Justin,</p>

Page 34	Page 35
<p>1 please?</p> <p>2 MR. BARNARD: Paragraph 10.</p> <p>3 A. I think that this just speaks to what not,</p> <p>4 you know, not knowing this material, not knowing</p> <p>5 this in the context of, you know, an art</p> <p>6 conservation exhibits in the context of the use</p> <p>7 of it in close proximity to the artwork.</p> <p>8 And also just by, you know, the, the</p> <p>9 entire system, if you're looking at this, of</p> <p>10 applying this with that tight of an air space</p> <p>11 onto a mural that's then onto an exterior wall,</p> <p>12 that the system of that is, is concerning. I</p> <p>13 think that that's probably what I was speaking</p> <p>14 to; is whether or not, you know, you're -- it's</p> <p>15 my understanding that the, this acoustic tile</p> <p>16 contains a mineral wool or a rock wool type of</p> <p>17 material. It's, it's made to be used in the</p> <p>18 respect of mounting to a wall to reduce noise and</p> <p>19 vibration. And this, now you're asking to cover</p> <p>20 over a mural with a very small air space on an</p> <p>21 exterior wall, and there is concern about that</p> <p>22 airflow.</p> <p>23 I mean, this is an insulating material;</p> <p>24 and so there is concern whether or not the</p> <p>25 construction of that panel would prohibit and</p>	<p>1 allow for proper airflow, I think is just what I</p> <p>2 was speaking to.</p> <p>3 Q. Thank you.</p> <p>4 A. Yeah.</p> <p>5 Q. The concern is that this is an unknown;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in your opinion, using an unknown</p> <p>9 material is not consistent with best art</p> <p>10 conservation practices; correct?</p> <p>11 A. Correct; yes.</p> <p>12 Q. But given that this is an unknown, you</p> <p>13 cannot offer an opinion that the acoustic tiles</p> <p>14 will in fact lead to harm to the murals; correct?</p> <p>15 MR. RUBIN: Objection. You can isolate</p> <p>16 each individual --</p> <p>17 MR. BARNARD: You've made your</p> <p>18 objection. No speaking objections, please.</p> <p>19 Q. Please proceed.</p> <p>20 A. I'm sorry; could you repeat what --</p> <p>21 Q. Sure.</p> <p>22 Because this is an unknown, you are not</p> <p>23 able to offer an opinion that the acoustic tiles</p> <p>24 will in fact cause harm to the mural; correct?</p> <p>25 A. I would speak to say that's not entirely</p>
Page 36	Page 37
<p>1 true. Through my research of the Oddy test</p> <p>2 results, there are components of this acoustic</p> <p>3 tile, and again I don't know because these</p> <p>4 aren't, you know, the Acoustimac company wouldn't</p> <p>5 divulge or provide or propriety or whatever, I</p> <p>6 don't know the actual context of it, but if you</p> <p>7 were to take and say mineral wool, rock wool,</p> <p>8 whatever it is, there are -- those, those, that</p> <p>9 material had been specifically tested and failed</p> <p>10 the Oddy test.</p> <p>11 So if I were to just base it on that, and</p> <p>12 then this construction of this laminated wood</p> <p>13 called plywood support that this on, and the</p> <p>14 amount of glue or adhesive that was used in the</p> <p>15 construction of that, I could assume that it, it</p> <p>16 would be more likely to cause damage than not, if</p> <p>17 that's answering your question.</p> <p>18 Q. So you don't -- you haven't actually</p> <p>19 examined these tiles yourself; correct?</p> <p>20 A. Right.</p> <p>21 Q. And you testified that their makeup and</p> <p>22 their likelihood of harming, of creating a</p> <p>23 harmful environment is not known; correct?</p> <p>24 A. I'm sorry; say that again.</p> <p>25 Q. You testified that the -- you do not know</p>	<p>1 how these acoustic tiles will behave in that</p> <p>2 environment; correct?</p> <p>3 A. I don't --</p> <p>4 MR. RUBIN: I'm going to object to the</p> <p>5 question.</p> <p>6 MR. BARNARD: Sure.</p> <p>7 Q. You can answer.</p> <p>8 A. I, I don't -- I guess the way that you're</p> <p>9 phrasing it, sorry.</p> <p>10 Q. Sure, let me.</p> <p>11 Can you say that you have a basis to offer</p> <p>12 an opinion on how the acoustic tiles will behave</p> <p>13 in this environment?</p> <p>14 A. I think what, your focus is on just the</p> <p>15 acoustic tile and not the entire system of which</p> <p>16 is being presented, which is the bigger picture</p> <p>17 of setting up a painting on an exterior wall with</p> <p>18 a very limited air space with an unknown, in my</p> <p>19 world of art conservation, material that then</p> <p>20 you're applying onto the face of this painting,</p> <p>21 for an undetermined amount of time.</p> <p>22 Q. Okay. But it is an unknown material;</p> <p>23 correct?</p> <p>24 A. I guess, yes, as a, as a whole, this</p> <p>25 Acoustimac acoustic tile is not something that</p>

Page 38	Page 39
<p>1 has, we, we would, I, I can find and, you know, 2 and I would use in this. 3 Q. So you do not have any specific 4 information on how the acoustic tile will 5 function in that environment; correct? 6 MR. RUBIN: Objection. 7 A. Specifically -- 8 Q. Go ahead, please. 9 MR. RUBIN: Let me just say, it's not a 10 speaking objection, I just, she, she can 11 answer the -- Emily, you can answer the 12 question when I object; so don't, don't be 13 distracted by that. 14 THE WITNESS: Oh, okay. 15 A. No, I just, I guess I'm just speaking to 16 the construction and the components of this are 17 concerning when you look at it from how this is 18 constructed and not knowing that this is a 19 material that has ever been proposed to cover 20 over a painting or an artwork of this, you know, 21 yeah. 22 Q. So is it fair to say that the concern here 23 is because it is unknown, there is risk? 24 A. The concern for what? 25 MR. RUBIN: Excuse me; objection.</p>	<p>1 Q. Is your concern from an art conservation 2 perspective that this is an unknown and you 3 cannot know how it will affect the mural? 4 A. I think it's one component of an overall 5 concern that this painting, again, is constructed 6 on an exterior wall, that you're proposing to 7 have a very small air space that then this 8 acoustic panel is going to be applied to; that 9 entire system is very concerning to me. 10 Q. Okay. It is a risk, but it is a risk 11 because of the unknown materials; is that fair? 12 MR. RUBIN: Objection. 13 A. It's a risk of what? 14 Q. Let me, let me back up. 15 A. Okay. 16 Q. I believe you testified that using an 17 unknown material like the acoustic tiles is not 18 consistent with best art preservation practices; 19 correct? 20 A. Well in this instance they, they've 21 proposed to use this acoustic tile, and that is 22 not something that I am aware is a material that 23 would be used in, in this context. 24 Q. Okay. You do not have a -- 25 A. And it is concerning, yes.</p>
Page 40	Page 41
<p>1 Q. You do not have a body of evidence on how 2 these acoustic tiles function in close proximity 3 to an artwork; correct? 4 A. I mean, other than what, what this 5 proposal is, yeah; no. 6 Q. Okay. So just focusing on the acoustic 7 tiles alone, I understand, we will get to the 8 fact that this is painted on an exterior wall, 9 but just focused on the use of the acoustic 10 tiles, are you offering an opinion that it is 11 more likely than not that the acoustic tiles will 12 in fact cause harm to the mural? 13 A. Well I think I stated it in my 14 declaration; it may adversely impact the murals. 15 Q. And you say may. Can you say, not knowing 16 the actual performance of these materials, that 17 it is more likely than not that there will be 18 harm to the mural? 19 A. I mean, I, I see where -- I, I understand 20 where you want me to take a position on this. 21 And again, I'm just speaking to the fact that 22 this is a material that is unfamiliar in this 23 context to me. I cannot speak to any certainty; 24 only, you know, the concern that this is not 25 something that I, I have any familiarity with in</p>	<p>1 this context of being used to cover over an 2 artwork for an undetermined, long-term time 3 period. 4 Q. And in -- 5 A. In the context of the entire system, 6 again, like looking at this from the entirety of 7 it and not just this panel, but the entire system 8 of which is being proposed, so. 9 Q. Thank you. And I apologize for 10 interrupting. 11 A. That's okay. 12 Q. I, Emily, I'm not asking you to take a 13 position. 14 A. Okay. 15 Q. What I, all that I'm trying to do is to 16 get you to clarify what I think you just did, but 17 let me take another try at it. 18 You are not offering an opinion that to a 19 specific degree of certainty there will be harm 20 to the mural because these acoustic tiles are 21 being used; correct? 22 MR. RUBIN: Objection. 23 A. I think any time you introduce an unknown, 24 you are setting yourself up for the possibility 25 of possible, you know, damage to the painting.</p>

Page 42	Page 43
<p>1 I mean, you're, you're applying an unknown</p> <p>2 material onto, in front of, in very close</p> <p>3 proximity to an artwork for an undetermined</p> <p>4 amount of time; and there, and there's concern</p> <p>5 there that there's no idea, no, no context of</p> <p>6 this being used or being acceptable material in I</p> <p>7 guess the art world, art conservation world,</p> <p>8 museum environment world.</p> <p>9 Q. Okay. So you've made very clear that your</p> <p>10 opinion is that this is not, in your opinion,</p> <p>11 consistent with best practices in art</p> <p>12 conservation; correct?</p> <p>13 A. The use of this acoustic tile?</p> <p>14 Q. Correct.</p> <p>15 A. I would just say in general the use of an</p> <p>16 unknown material, without that type of</p> <p>17 consideration of the impact it would have on an</p> <p>18 artwork, is not best practices.</p> <p>19 Q. Okay. I, and I'm going to ask this again</p> <p>20 to try to just get a simple answer.</p> <p>21 You are not offering an opinion as an art</p> <p>22 conservator that there -- it is greater than 50</p> <p>23 percent probable that the use of these acoustic</p> <p>24 tiles, which are an unknown, will in fact cause</p> <p>25 harm to the mural; yes?</p>	<p>1 MR. RUBIN: Objection. The question is</p> <p>2 -- does not in any way reflect the context</p> <p>3 of the totality of her opinion.</p> <p>4 MR. BARNARD: Okay. And no speaking</p> <p>5 objections, please. If we have any more,</p> <p>6 we're going to stop the --</p> <p>7 MR. RUBIN: And I'll also object</p> <p>8 because you've asked and answered -- you've</p> <p>9 asked that question six times and she's</p> <p>10 answered it.</p> <p>11 MR. BARNARD: I have not gotten a</p> <p>12 straight answer.</p> <p>13 MR. RUBIN: You haven't got the answer</p> <p>14 you want, but you've gotten an answer.</p> <p>15 MR. BARNARD: Please stop. I'm</p> <p>16 entitled to continue -- if you want to stop</p> <p>17 the deposition, you can, and you can seek an</p> <p>18 order. But short of that, please refrain</p> <p>19 from making speaking objections.</p> <p>20 I am simply asking to clarify the scope</p> <p>21 of her opinions. And I -- it is relevant</p> <p>22 whether she is offering an opinion that is</p> <p>23 more likely than not that the use of these</p> <p>24 unknown tiles will in fact cause harm to the</p> <p>25 murals. I understand --</p>
Page 44	Page 45
<p>1 MR. RUBIN: You're speaking now. Why</p> <p>2 don't you just ask your questions of her.</p> <p>3 MR. BARNARD: Yeah.</p> <p>4 Q. Let me try once more.</p> <p>5 Are you offering an opinion that it is</p> <p>6 more likely than not that the use of these</p> <p>7 unknown materials will in fact cause harm to the</p> <p>8 mural?</p> <p>9 MR. RUBIN: Objection.</p> <p>10 A. Again, because of the unknownness of them,</p> <p>11 I can only assume, based on what I understand is</p> <p>12 the construction of it, and again, because</p> <p>13 they're not a material that has been -- is used</p> <p>14 in this context, and I mean, again, I mean I hate</p> <p>15 to keep saying this as, as the entire system of,</p> <p>16 of what is being proposed, I, I can't see how it</p> <p>17 wouldn't cause damage. I mean, I just -- you</p> <p>18 know, you're --</p> <p>19 Q. These are unknown materials; correct?</p> <p>20 A. Right; yes.</p> <p>21 Q. They have not been subjected --</p> <p>22 A. Well unknown in, in this, in this context.</p> <p>23 I'm sorry to interrupt; but I just want to</p> <p>24 clarify that these are unknown materials. An</p> <p>25 acoustic panel is not something to me, I mean,</p>	<p>1 that I have ever seen used in close proximity to</p> <p>2 cover up an artwork, a painting, a mural,</p> <p>3 whatever you want to call it, and it's</p> <p>4 concerning.</p> <p>5 I don't know how else you want me to say,</p> <p>6 how else I can answer this in a way that reflects</p> <p>7 what I have been presented with, the proposal</p> <p>8 that's been provided to me from Vermont Law</p> <p>9 School to cover up this mural. And, and one of</p> <p>10 the concerns was this acoustic panel, red flag</p> <p>11 immediately that this is not something that, that</p> <p>12 has -- I have ever seen used in this context,</p> <p>13 nor, you know, in the context of close proximity</p> <p>14 to artwork.</p> <p>15 And I mean, as I said, going through the</p> <p>16 Oddy test results individually, there are</p> <p>17 suggestions, there are tests that have been</p> <p>18 conducted on similar types of material, the rock</p> <p>19 wool, the mineral wool, that have shown concern</p> <p>20 and failed in those tests to be acceptable</p> <p>21 materials to be utilized in proximity to artwork.</p> <p>22 That's, so by that, by deducing from that,</p> <p>23 I would say, and I don't know what percentage, I</p> <p>24 don't work in percentages, I would say it's more</p> <p>25 likely than not that this acoustic panel in the</p>

Page 46	Page 47
<p>1 creation of this entire system, with a very</p> <p>2 limited air space and with this painting being on</p> <p>3 an exterior wall, is cause for concern, and I</p> <p>4 can't see how damage couldn't occur over time.</p> <p>5 Q. When will that damage occur?</p> <p>6 A. I mean, I don't know. I mean, I hope --</p> <p>7 I, I, I don't know; I can't answer that.</p> <p>8 Q. You don't have any basis to predict when</p> <p>9 it will occur?</p> <p>10 A. I, I wouldn't want to even speculate.</p> <p>11 Q. It would be speculation in fact; correct?</p> <p>12 MR. RUBIN: Objection.</p> <p>13 A. No. I mean, you could make assumptions.</p> <p>14 I mean, you know what the typical, you know,</p> <p>15 climate cycle is here; unless we continue on with</p> <p>16 these, you know, hot, very unusual summers and</p> <p>17 the amount of rain we're having. But any time</p> <p>18 you have a typical New England weather cycle, you</p> <p>19 have the ability for these rapidly changing</p> <p>20 shifts in temperature and humidity.</p> <p>21 I don't know how long it would take</p> <p>22 before, you know, air gets trapped and moisture</p> <p>23 becomes a problem and you end up, you know, with</p> <p>24 damage to the, to the paint surface of the mural.</p> <p>25 I, you know, I --</p>	<p>1 Q. Well let's talk about that. You say you</p> <p>2 don't see how damage could not occur. What is</p> <p>3 the damage that occurs?</p> <p>4 A. The potential damage that could occur?</p> <p>5 Q. Well you've said it's more likely than not</p> <p>6 that damage will occur.</p> <p>7 A. I mean, I think we're talking about, you</p> <p>8 know, what, what the main possibilities are; and</p> <p>9 that's mold or, you know, fungal growth due to</p> <p>10 high levels of moisture and humidity,</p> <p>11 temperature. You're talking about delamination</p> <p>12 of the paint; you're talking about possible</p> <p>13 shifting of pigments, colors. I mean, there's</p> <p>14 certain pigments that, you know, respond</p> <p>15 differently to different types of conditions. I</p> <p>16 think that could change color or surface quality</p> <p>17 over time. There's a, there's a bunch of</p> <p>18 different factors there.</p> <p>19 Q. That relates to the flow of air in that</p> <p>20 space and the climate conditions; correct?</p> <p>21 A. That's one, one component, yes. And then,</p> <p>22 and then again, whatever components are in that</p> <p>23 acoustic tile that could then off-gas and become</p> <p>24 trapped in this, in this area for sure.</p> <p>25 Q. When would that damage occur?</p>
Page 48	Page 49
<p>1 A. I don't know.</p> <p>2 Q. And what specific damage could occur from</p> <p>3 this off-gassing?</p> <p>4 A. I, I wouldn't be able to say because I</p> <p>5 don't know, you know, the, what off-gassing of</p> <p>6 this material would be. That would -- I can't.</p> <p>7 Q. And again, you have not -- you don't know</p> <p>8 what the permeability of these acoustic tiles is;</p> <p>9 correct?</p> <p>10 A. Like the permanence of them?</p> <p>11 Q. The permeability.</p> <p>12 A. I guess that's the unknown, correct? I</p> <p>13 mean --</p> <p>14 Q. So you don't know what gasses would be</p> <p>15 off-gassed, if any, you don't know how permeable</p> <p>16 the tiles are, you don't know when damage will</p> <p>17 occur, but you can offer an opinion that it is</p> <p>18 more likely than not that damage will in fact</p> <p>19 occur from this unknown material?</p> <p>20 MR. RUBIN: Objection.</p> <p>21 Q. I'm trying to -- I understand that your</p> <p>22 opinion is that these are not consistent with</p> <p>23 best practices and that there is risk. I'm</p> <p>24 trying to understand how you can offer an opinion</p> <p>25 quantifying that risk as more likely than not to</p>	<p>1 cause actual harm to the mural.</p> <p>2 A. Well I --</p> <p>3 MR. RUBIN: Objection. Excuse me;</p> <p>4 objection, that's not a question, that's a</p> <p>5 statement.</p> <p>6 Q. Please explain to me, please explain to</p> <p>7 me, given the unknowns that we've just discussed</p> <p>8 that you don't know what gasses will be off-</p> <p>9 gassed, you don't know how permeable the tiles</p> <p>10 are, and thus don't know how they will regulate</p> <p>11 airflow to the material, how you can offer an</p> <p>12 opinion that it is more likely than not that use</p> <p>13 of these tiles will cause damage to the mural?</p> <p>14 MR. RUBIN: Objection to the form.</p> <p>15 A. Again, you're, you're, you're not looking</p> <p>16 at the entire picture of this, and this is what I</p> <p>17 was asked to do, was to look at the entire</p> <p>18 proposal of which this mural was going to be</p> <p>19 covered over and the, and the construction of it.</p> <p>20 And so when you, again, are taking a</p> <p>21 painting that's on an exterior wall and you're,</p> <p>22 you have a very limited air space and you're</p> <p>23 applying an unknown material onto the face of</p> <p>24 that, there is cause for concern that that, that</p> <p>25 whole system has the potential to damage a</p>

Page 50	Page 51
<p>1 painting.</p> <p>2 And it, again, I, I don't know how else to</p> <p>3 say this, is that the acoustic tile is not</p> <p>4 something that I have seen or encountered in the</p> <p>5 use in this respect in this context in close</p> <p>6 proximity to an artwork. I guess that's all,</p> <p>7 that's all, all I can say.</p> <p>8 And as far as the other stuff, I mean,</p> <p>9 again, that, that was not part of my, you know,</p> <p>10 what I was asked to look at. I was asked to look</p> <p>11 at what the proposed wall construction was and,</p> <p>12 and the concerns that I had in relationship to</p> <p>13 the long -- to the, to the protection of this</p> <p>14 mural.</p> <p>15 Q. You were asked to consider as an art</p> <p>16 conservator whether this proposed covering was</p> <p>17 consistent with best practices?</p> <p>18 MR. RUBIN: Objection.</p> <p>19 A. Yes. I, I, I guess that would be, that</p> <p>20 would be my role in this.</p> <p>21 Q. Okay. So we may come back to this; but I</p> <p>22 want to move on to the portion of your</p> <p>23 Declaration that relates to the space between the</p> <p>24 wall and the mural.</p> <p>25 You've said multiple times that you're</p>	<p>1 concerned about the fact that the mural is</p> <p>2 painted on an exterior wall. Can you explain</p> <p>3 why?</p> <p>4 A. I think I already did, but I will go</p> <p>5 through it again.</p> <p>6 Exterior walls are, just by the nature of</p> <p>7 them, problematic. They're a point where major</p> <p>8 shifts as we know in New England of temperature</p> <p>9 and humidity can occur. There is a potential for</p> <p>10 moisture to infiltrate from the exterior into the</p> <p>11 wall. I mean, it's just, it, they're just, by</p> <p>12 the nature of them, a concern I, I guess.</p> <p>13 Q. That risk will vary based upon the manner</p> <p>14 of construction and insulation; correct?</p> <p>15 A. Sure.</p> <p>16 Q. If you have a well insulated exterior wall</p> <p>17 with appropriate use of a vapor barrier, would</p> <p>18 that affect the risk of moisture infiltration?</p> <p>19 A. It could reduce it I guess.</p> <p>20 Q. Is moisture infiltration more likely to be</p> <p>21 a problem in older buildings like Trinity Church</p> <p>22 than in new construction?</p> <p>23 A. I couldn't, I couldn't say that.</p> <p>24 Q. Okay. Do you have any information on how</p> <p>25 the exterior wall of Chase Hall, where the Kerson</p>
Page 52	Page 53
<p>1 mural is located, was constructed?</p> <p>2 A. I believe it was part of either Daniel</p> <p>3 Hecht's Declaration, and the, I think some, I</p> <p>4 want to say, I don't want to say presumptions on,</p> <p>5 on his part, but understanding of the</p> <p>6 construction at that time on how that wall may</p> <p>7 have been built.</p> <p>8 Q. Let me, let me focus you on paragraph 13</p> <p>9 of your Declaration. You say: Since we do not</p> <p>10 know the construction of the exterior wall and</p> <p>11 the type of insulation used, it is difficult to</p> <p>12 estimate what the temperature changes may be in</p> <p>13 the cavity. Is that fair?</p> <p>14 A. Yes. I believe we know there was no --</p> <p>15 yes, that is fair.</p> <p>16 Q. Okay. So you do not have any information</p> <p>17 on how the exterior wall's constructed and</p> <p>18 insulated; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And we discussed that this risk created by</p> <p>21 the fact the mural is painted on the exterior</p> <p>22 wall and that there will be a space between the</p> <p>23 mural and the cover, that depends in part as well</p> <p>24 on the permeability of the cover; correct?</p> <p>25 A. That's one consideration, yep.</p>	<p>1 Q. Okay. You've previously done work with</p> <p>2 murals that have been concealed for extensive</p> <p>3 periods of time behind a wall; correct?</p> <p>4 A. Could you be more specific?</p> <p>5 Q. Did you work on the Raymond Pease mural at</p> <p>6 Lone Rock Point in Perkins Hall at UVM?</p> <p>7 A. Yes; I was asked -- yes.</p> <p>8 Q. Can you describe that, the history of that</p> <p>9 work to me, do you recall?</p> <p>10 A. Sure.</p> <p>11 I was contacted, the building had been</p> <p>12 undergoing a renovation by a local company. The</p> <p>13 interior of Perkins Hall was being demolished I</p> <p>14 guess is the only way I can say, demoed.</p> <p>15 During that process one of the</p> <p>16 construction workers in removing an interior wall</p> <p>17 found what looked like a painting on that wall.</p> <p>18 And I was soon after called in to provide my</p> <p>19 opinion and help to conduct, or to, to implement</p> <p>20 or oversee or do, I guess, the removal of that</p> <p>21 mural so that they could continue on with the</p> <p>22 construction of that building.</p> <p>23 Q. Was there substantial damage to the mural</p> <p>24 at the time you examined it?</p> <p>25 A. Substantial damage? I, I, I'm not sure.</p>

Page 54	Page 55
<p>1 I mean, it was, it's an oil painting on canvas. 2 It was -- nothing substantial I don't think, 3 other than -- I don't know. I don't know what -- 4 I'm not sure what you -- 5 Q. Describe the condition of the mural. 6 A. It was just an oil painting on canvas, 7 about 5x6 feet, applied to a wall interior. And 8 the surface, I mean if you want to get into the 9 technicals of it, appeared that there was some 10 concern that the paint layer had, how do I want 11 to say, potential for detaching from the oil 12 canvas. But overall it, it looked okay I guess. 13 I don't know what, I don't know what it 14 looked like before. I, I -- there was no, there 15 was no documentation of the painting before, so I 16 had really no context of what that would have 17 looked like. 18 Q. You were aware, though, that the mural had 19 been concealed behind that wall for nearly 30 20 years? 21 A. Oh, yes; correct. 22 Q. To your knowledge, were any art 23 conservators involved in erecting the wall that 24 covered the Pease mural? 25 A. Yes; I believe at the time colleagues at</p>	<p>1 the Shelburne Museum were called in, none of 2 which specialized in painting conservation. 3 I think that was a concern at the time, 4 that there was nobody qualified in the area to, 5 to call on. And I, I think you would have to ask 6 them as to the decisions that were made to then 7 wall over the mural. 8 Q. In your opinion, was UVM's decision to 9 enclose the Pease mural behind a wall 30 years 10 prior an intentional act of distortion or 11 mutilation of the work? 12 A. Hmm. No; I think -- can you just repeat 13 that again? 14 Q. Sure. In your opinion, was UVM's decision 15 to enclose the Pease mural behind a wall 30 years 16 prior an intentional act of distortion or 17 mutilation of the mural? 18 A. No; I think that quite the opposite. I, I 19 think at the time every effort was, was there to, 20 to recognize the, that this was a very important 21 piece of artwork that was done during, not the 22 WPA but the WCA; and at the time they were, they 23 just did not have the capacity to deal with it. 24 And the only way that they could see that the 25 renovation of the building was going to happen</p>
Page 56	Page 57
<p>1 and, and they made every effort to, in a way, 2 preserve that painting by putting this wall over 3 it. 4 Q. Were there any steps taken to ensure 5 proper preservation of the mural beyond 6 constructing the wall, to your knowledge? 7 A. I, I am not aware; you would have to ask 8 the people that were involved then. But I didn't 9 see any signs of interventions or anything like 10 that. 11 Q. Is there any -- were you aware of any 12 climate control or vents behind the wall? 13 A. No. 14 Q. You were also involved with the so-called 15 lost mural at a synagogue in Burlington; correct? 16 A. Yes. 17 Q. Can you explain a little bit the history 18 of that work? 19 A. Well my part in that, I was called in to 20 provide a second opinion on this next phase of 21 the mural. So my work was primarily after the 22 mural had been relocated into the Ohavi Zedek 23 Synagogue. I was looking at it from what they 24 were asking, you know, what the next steps were; 25 removing varnish and, and reintegrating all the</p>	<p>1 paint loss and -- 2 REPORTER: I'm sorry; I couldn't hear 3 you. And reintegrating all the -- 4 A. Oh, I'm sorry; I was trying to think of 5 the right word and getting too technical into 6 conservation. 7 But I was basically asked to look at the 8 surface and the varnish removal and, and then 9 compensating for any paint loss on that mural; 10 which there was, which there is a significant 11 amount of paint loss on that painting. 12 Q. Are you familiar with the longer history 13 of the mural and how it was concealed? 14 A. Yes, I am. 15 Q. Okay. And you understand that it was in a 16 commercial space for many decades? 17 A. I mean, originally the Synagogue, it was 18 the Synagogue and then it was converted into I 19 believe apartment buildings or rental units, yes. 20 Q. And at the time of that conversion a 21 decision was made to install a wall over it; 22 correct? 23 A. Yes. 24 Q. And are you aware of the purpose of 25 installing the wall at that time?</p>

Page 58	Page 59
<p>1 A. I, I'm unsure what the purpose was. I 2 know the outcome of that was, because there were 3 images that I, I was provided as to the content 4 and context of the damage that I was facing. 5 That wall was constructed with a, with an 6 insulation. It was an exterior wall; that wall 7 was constructed with insulation that created a 8 moisture trap. 9 And but prior to that painting being 10 covered up it was in I want to say mint 11 condition; it was in very good, stable condition. 12 When that wall was taken off I would have to say 13 roughly, a large, I don't want to get into 14 percentages, but a large portion of that paint 15 layer had delaminated off of the, off of the wall 16 substrate. 17 Q. Do you know anything about the 18 construction of the exterior wall behind that 19 mural? 20 A. I believe this was in a, I don't want to 21 say a turret, but a half dome area. It was a 22 plaster wall done in lath, with the exterior wall 23 being either slate roof or some other exterior, I 24 don't know if it was part of a siding, but I 25 think that's how I understood the construction of</p>	<p>1 it. 2 Q. Are you familiar with Rick Kerschner? 3 A. Yes, I am. 4 Q. Okay. And are you aware that Rick was 5 involved in making the decision to put the wall 6 up in front of the mural? 7 A. No, I was not. 8 Q. Okay. So going back to the mural at issue 9 here in Chase Hall, you've testified you don't 10 know what the construction is or insulation of 11 the exterior wall in Chase Hall; correct? 12 A. Right. 13 Q. So you're concerned about a potential risk 14 based upon sealing the space up; but is it fair 15 to say you don't have any specific information on 16 how the creation of an enclosed cavity will 17 affect the mural? 18 A. I'm sorry, say that again. 19 MR. BARNARD: Could you read that back, 20 Sherri, please? 21 (Reporter read back the question: So 22 you're concerned about a potential risk 23 based upon sealing the space up; but is it 24 fair to say you don't have any specific 25 information on how the creation of an</p>
Page 60	Page 61
<p>1 enclosed cavity will affect the mural?) 2 MR. RUBIN: Objection to the form. 3 A. Again, I would just go back to the, the 4 concerns any time you're dealing with an exterior 5 wall. 6 Q. You have concerns, again, based upon 7 unknowns. But to, to quantify those concerns you 8 would need to know more about the construction of 9 the wall and the permeability of the covering; 10 correct? 11 A. I -- 12 MR. RUBIN: Objection. 13 THE WITNESS: Sorry, Richard. 14 MR. RUBIN: Objection as to the form of 15 the question. Go ahead and answer. 16 A. I, I think I -- you're asking me to 17 quantify -- 18 Q. I'm not asking you to quantify. 19 A. No. 20 Q. I'm asking you if you have the information 21 necessary to quantify the risk? 22 A. I think when, I think, you know -- I mean 23 it's, it's an exterior wall; we might assume it 24 was insulated. I mean, we might assume there was 25 a vapor barrier. I mean, I think those were all</p>	<p>1 variables that you take into consideration. 2 I think, again, whether they're present or 3 not, or to what extent or type or material, it's 4 still an exterior wall that you have the 5 potential for, in our climate, shifts in 6 temperature and humidity and infiltration of 7 moisture from, from the exterior. 8 Q. I understand that you're testifying there 9 was a potential, given that it's on an exterior 10 wall and given the unknowns. 11 But given those unknowns, you are unable 12 to quantify how likely it is that harmful 13 conditions will in fact be created; correct? 14 MR. RUBIN: Objection. 15 A. I, I don't know how to answer this one. 16 You're wanting me to quantify something. 17 Q. I'm not wanting you to quantify something. 18 I'm asking if you -- 19 A. Well you kind of are. But keep going; 20 sorry. 21 Q. I'm asking if you are able to quantify, 22 given the unknowns? 23 A. Again, I think that I, I am just playing 24 out all of the different variables of what an 25 exterior wall construction would look like. And</p>

Page 62	Page 63
<p>1 based on my experience and knowledge of certain</p> <p>2 instances of projects that I have either been</p> <p>3 involved in or have, you know, over the past 20</p> <p>4 years, can say pretty confidently when you have</p> <p>5 an exterior wall, you are introducing a number of</p> <p>6 different areas of concern. This shift in</p> <p>7 temperature, the shift in humidity, the, you</p> <p>8 know, the shift in, in this moisture</p> <p>9 infiltration. Whether I can quantify it or not,</p> <p>10 I --</p> <p>11 Q. I, I understand fully your answer.</p> <p>12 A. Yeah.</p> <p>13 Q. I, I just want you to answer the last</p> <p>14 piece; you said whether I can quantify it or not.</p> <p>15 Can you quantify it or not?</p> <p>16 A. I don't know in what, like in what realm</p> <p>17 or what, in what context or what metric system</p> <p>18 you would like me to quantify this. You know,</p> <p>19 it's -- I mean, I went to engineering school; I</p> <p>20 understand forces and dynamics and different</p> <p>21 standards of measurements and I -- that's. You</p> <p>22 know, I just don't know to what, how you -- what</p> <p>23 you're asking me to be able to quantify how.</p> <p>24 Q. As an art conservator, would you feel</p> <p>25 comfortable offering an opinion as to the</p>	<p>1 likelihood that there will be harm to a mural</p> <p>2 given the unknowns you've described?</p> <p>3 A. I would say given everything I've just</p> <p>4 shared with you, I, I feel quite confident that</p> <p>5 you have a painting on an exterior wall and there</p> <p>6 is a number of variables that contribute to the</p> <p>7 concern that there is potential for damage when</p> <p>8 you have something like that in the, in the</p> <p>9 context of the system of which you are proposing</p> <p>10 that this, you know, exterior wall with the air</p> <p>11 space with acoustic panels, if we want to go back</p> <p>12 to the, to the buildup of all of this, yeah.</p> <p>13 Q. What's the likelihood that there will in</p> <p>14 fact be damage to the mural?</p> <p>15 MR. RUBIN: Objection. To what part</p> <p>16 are you talking about?</p> <p>17 Q. What is the likelihood --</p> <p>18 MR. RUBIN: Overall?</p> <p>19 Q. Given that, given that constellation of</p> <p>20 system elements, what is your opinion, if you</p> <p>21 have one, as to the likelihood that there will in</p> <p>22 fact be damage to the mural?</p> <p>23 A. Just like I can't say that it's not</p> <p>24 unlikely. I mean, I think, again, based on my</p> <p>25 experience, based on my knowledge and, and</p>
Page 64	Page 65
<p>1 witness to damage having been occurred to other</p> <p>2 paintings. I mean the UVM painting, you know,</p> <p>3 was very different; I mean, we're talking about</p> <p>4 an oil painting on canvas on an interior wall.</p> <p>5 You're talking about in this case, the</p> <p>6 Kerson painting, mural on an exterior wall, then</p> <p>7 setting up again with this very small air space</p> <p>8 with this acoustic panel applied to it, and</p> <p>9 you're creating a system whereby one can only</p> <p>10 presume, with the knowledge and experience that I</p> <p>11 have and, and training, the likelihood of damage</p> <p>12 occurring. I don't know how much, I don't know</p> <p>13 what percentage, I don't know if it's 50 percent</p> <p>14 or more; but I am just saying that there are in,</p> <p>15 in that system, concerns for damage to occur to</p> <p>16 this painting.</p> <p>17 And then I, I, I mean, and I'll just add</p> <p>18 to it, you're taking away, you know, I'll just</p> <p>19 jump to the next thing, you're taking away the</p> <p>20 one tool that we utilize more often than not;</p> <p>21 which is to -- you're, you're taking away the</p> <p>22 ability to monitor this visually. I mean, so,</p> <p>23 you know, again back to your point of when, how</p> <p>24 long do I think this is going to occur; you know,</p> <p>25 if you covered it up, I have no idea, so.</p>	<p>1 Q. We'll talk about that in a second.</p> <p>2 A. Okay. I know we're getting there; I just</p> <p>3 wanted to get, get you maybe some answers before</p> <p>4 we get to that part.</p> <p>5 Q. Yes; thank you for your patience, and I</p> <p>6 believe you, you answered my question.</p> <p>7 A. Okay.</p> <p>8 Q. And I'm going to isolate it and confirm it</p> <p>9 so that we can hopefully --</p> <p>10 MR. RUBIN: I'm objecting to your</p> <p>11 narrative; why don't you just ask a</p> <p>12 question.</p> <p>13 MR. BARNARD: Yeah, I'm going to get to</p> <p>14 it, Richard.</p> <p>15 Q. I'm going to try to ask this as clearly as</p> <p>16 possible.</p> <p>17 Is it correct that, and I believe you just</p> <p>18 testified to this, that you cannot say --</p> <p>19 MR. RUBIN: Object to your comment as</p> <p>20 to what she testified.</p> <p>21 MR. BARNARD: No speaking objections,</p> <p>22 please, Richard.</p> <p>23 MR. RUBIN: I'm objecting to the form</p> <p>24 of your question.</p> <p>25 MR. BARNARD: Thank you.</p>

Page 66	Page 67
<p>1 MR. RUBIN: You're welcome.</p> <p>2 Q. Is it correct that you cannot give a</p> <p>3 specific percentage likelihood that there will be</p> <p>4 damage to the mural?</p> <p>5 A. I will not give a percentage, no.</p> <p>6 Q. Thank you.</p> <p>7 And the reason that you will not give a</p> <p>8 percentage is because of the number of unknowns</p> <p>9 correct?</p> <p>10 A. I, I'm just, I'm not going to hold myself</p> <p>11 to, to a percentage. I just, I, I won't do that,</p> <p>12 no.</p> <p>13 Q. Okay. So you, you just testified and</p> <p>14 raised this in your Declaration as to a concern</p> <p>15 that there will be no means to access the mural</p> <p>16 and confirm whether there is damage; correct?</p> <p>17 A. Well I've said visual; I didn't say no</p> <p>18 means. But go ahead.</p> <p>19 Q. Okay. Well, VLS has indicated that it</p> <p>20 will install a humidity and temperature monitor;</p> <p>21 correct?</p> <p>22 A. Yes; that's what I am aware of, yes.</p> <p>23 Q. One of the concerns that you've raised is</p> <p>24 that there will be a potential for fluctuations</p> <p>25 in temperature and for moisture infiltration;</p>	<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Would a humidity and temperature monitor</p> <p>4 provide useful information about those risks?</p> <p>5 A. Sure; yes, yes.</p> <p>6 Q. Are you aware of any reason that a section</p> <p>7 of the wall couldn't be removed, if necessary, to</p> <p>8 confirm the status of the mural?</p> <p>9 A. A section of the proposed wall?</p> <p>10 Q. Correct.</p> <p>11 A. Am I aware? No; that's not something, no,</p> <p>12 I'm not aware of that.</p> <p>13 Q. So as far as you know, there's no reason</p> <p>14 that if there were humid conditions behind the</p> <p>15 wall, someone could not remove a portion of the</p> <p>16 wall and confirm whether there was damage to the</p> <p>17 mural; correct?</p> <p>18 A. That was not I guess -- I guess I would</p> <p>19 say that would be correct, if I understood the</p> <p>20 question.</p> <p>21 Q. As someone in the art conservation</p> <p>22 community, have you followed the controversy of</p> <p>23 the mural off of Church Street in Burlington, the</p> <p>24 Everyone Loves A Parade mural?</p> <p>25 A. Yes.</p>
Page 68	Page 69
<p>1 Q. Okay. You understand that there's been</p> <p>2 controversy over that mural because of its</p> <p>3 depiction of Vermont's history and the exclusion</p> <p>4 of the Abenaki tribe?</p> <p>5 A. Yes. I mean, I'm aware of the -- I'm --</p> <p>6 yes; yes.</p> <p>7 Q. Are you aware that it's been vandalized</p> <p>8 multiple times by critics?</p> <p>9 A. I believe I have, I was, I've read that,</p> <p>10 yes.</p> <p>11 Q. Do you agree that vandalism is a risk for</p> <p>12 controversial pieces of public art?</p> <p>13 A. Oh, sure; yes.</p> <p>14 Q. Do you agree that installing a wall over</p> <p>15 the Kerson mural at Vermont Law School would help</p> <p>16 prevent vandalism of that type?</p> <p>17 A. I can't say that.</p> <p>18 Q. You can't say that it would be more likely</p> <p>19 to protect against someone painting over the</p> <p>20 mural, for example?</p> <p>21 A. No.</p> <p>22 Q. Okay. Have you been asked to provide an</p> <p>23 opinion as to whether the wall proposed by</p> <p>24 Vermont Law School will distort, mutilate or</p> <p>25 modify the Kerson mural?</p>	<p>1 A. Was I asked -- I'm sorry; say that again.</p> <p>2 Q. Sure. Have you been asked to provide an</p> <p>3 opinion that it, the wall proposed by VLS will</p> <p>4 distort or mutilate or modify the Kerson mural?</p> <p>5 A. No. I was asked to provide an opinion on</p> <p>6 the proposed wall covering, the materials that</p> <p>7 were being used.</p> <p>8 MR. BARNARD: I'm just going to take a</p> <p>9 moment and look through my notes, but I</p> <p>10 think I'm close to done.</p> <p>11 That's all I have.</p> <p>12 EXAMINATION BY MR. RUBIN:</p> <p>13 Q. I have a couple of questions, Emily.</p> <p>14 A. Yes.</p> <p>15 Q. Over the course of the deposition you</p> <p>16 discussed various aspects of the construction of</p> <p>17 the proposed wall which cause concern; correct?</p> <p>18 A. Yes.</p> <p>19 Q. One thing you talked about was the use of</p> <p>20 these acoustic tiles which contained rock wool;</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And you were --</p> <p>24 A. Well I should -- some, some material of</p> <p>25 that nature, yes; I would just clarify that. I</p>

Page 70	Page 71
<p>1 don't know, yeah. Sorry; go ahead.</p> <p>2 Q. And concern that the rock wool or similar</p> <p>3 substance had failed the Oddy test and that was</p> <p>4 of concern; correct?</p> <p>5 A. Yes.</p> <p>6 Q. You expressed concern about the proximity</p> <p>7 of the proposed acoustical tile wall to the</p> <p>8 surface of the mural?</p> <p>9 A. Yes.</p> <p>10 Q. You proposed that you -- you discussed a</p> <p>11 concern about the permeability of the exterior</p> <p>12 wall, potential permeability of the exterior wall</p> <p>13 creating a changing environment along the surface</p> <p>14 of the wall? Yes?</p> <p>15 A. Yes; yes.</p> <p>16 Q. You expressed concern about the inability</p> <p>17 to examine the wall visually, the two walls,</p> <p>18 actually, visually?</p> <p>19 A. Yes.</p> <p>20 Q. Or any particular system to monitor</p> <p>21 humidity electronically or to have anyone, to</p> <p>22 have anyone available to monitor the humidity?</p> <p>23 MR. BARNARD: Objection.</p> <p>24 Q. Did you have also a concern that there was</p> <p>25 no description of anybody available to monitor</p>	<p>1 the humidity within the wall electronically?</p> <p>2 A. Yes; I think that is a concern.</p> <p>3 Q. Okay. So looking at all of these factors</p> <p>4 holistically, do you have an opinion whether it's</p> <p>5 more likely than not that damage will occur to</p> <p>6 the surface of the mural if it is constructed as</p> <p>7 proposed by Vermont Law School?</p> <p>8 A. Yes; I think I have stated that in my</p> <p>9 Declaration, yes.</p> <p>10 Q. The answer is you'd have an opinion; and</p> <p>11 what is your opinion?</p> <p>12 I'm not asking in terms of percentage; I'm</p> <p>13 asking whether it's more likely than not in your</p> <p>14 opinion that damage will occur?</p> <p>15 A. I think when you lay out the entire</p> <p>16 system, I am -- there is concern that there is</p> <p>17 the potential risk for damage, yes.</p> <p>18 Q. Is it more likely than not that it will</p> <p>19 occur?</p> <p>20 A. Oh, I would say, I would say more likely,</p> <p>21 just given -- yes; yes.</p> <p>22 MR. RUBIN: Thank you.</p> <p>23 RE-EXAMINATION BY MR. BARNARD:</p> <p>24 Q. Couple of followup questions.</p> <p>25 A. Sure.</p>
Page 72	Page 73
<p>1 Q. You mentioned that the acoustic panels</p> <p>2 contain rock wool or some material of that sort;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. You don't know what specific type of rock</p> <p>6 wool is contained in the acoustic tiles; correct?</p> <p>7 A. I think they made reference to mineral</p> <p>8 wool, rock wool; I mean they're kind of, they're</p> <p>9 similar materials. But I guess specifically, no;</p> <p>10 you're correct.</p> <p>11 Q. And are you aware that different types of</p> <p>12 mineral wools have different off-gassing</p> <p>13 characteristics?</p> <p>14 A. Yes. I mean, I, I would assume; I, I</p> <p>15 would say yes.</p> <p>16 Q. Okay.</p> <p>17 A. Yes; I'm sorry.</p> <p>18 Q. So you don't know what the specific risk</p> <p>19 of off-gassing is from the particular mineral</p> <p>20 wool used in this tile; correct?</p> <p>21 A. In this specific tile, no.</p> <p>22 Q. You mentioned that some type of rock wool</p> <p>23 has failed the Oddy test, but you don't know what</p> <p>24 specific gas was off-gassed; correct?</p> <p>25 A. I, I would have to look through the</p>	<p>1 results to confirm what that would be.</p> <p>2 Q. Can you say sitting here today with any</p> <p>3 certainty what gasses, if any, will be off-gassed</p> <p>4 from the acoustic tiles?</p> <p>5 A. No, I will not do that.</p> <p>6 Q. Okay. And you cannot say sitting here</p> <p>7 today how any gas that might be off-gassed from</p> <p>8 the acoustic tiles would affect the mural;</p> <p>9 correct?</p> <p>10 A. I am not prepared to, no; correct.</p> <p>11 Q. You testified that in your view it is more</p> <p>12 likely than not that some damage will occur to</p> <p>13 the mural with the wall as constructed; correct?</p> <p>14 A. I believe I've answered that, yes, in</p> <p>15 multiple ways; correct, yes.</p> <p>16 Q. But you're unable to give a particular</p> <p>17 percentage; correct?</p> <p>18 A. Correct.</p> <p>19 Q. You can't say when that damage might</p> <p>20 occur; correct?</p> <p>21 A. Correct.</p> <p>22 Q. You can't say how extensive that damage</p> <p>23 will be; correct?</p> <p>24 A. Correct.</p> <p>25 Q. You can't say what specific type of damage</p>

Page 74	Page 75
<p>1 will occur; correct?</p> <p>2 A. I, I, I have provided examples of what</p> <p>3 typical damage would look like under these type</p> <p>4 of circumstances; but I will not -- you know, and</p> <p>5 that's the only thing I can base that on.</p> <p>6 Q. And yet given all the many unknowns here,</p> <p>7 you feel comfortable as a professional saying not</p> <p>8 just that there is risk or concern, but that it</p> <p>9 is more likely than not that there will be some</p> <p>10 sort of damage to the mural?</p> <p>11 A. Yes.</p> <p>12 MR. BARNARD: Okay. That's all I have</p> <p>13 MR. RUBIN: No further questions.</p> <p>14 (Discussion off record and signature</p> <p>15 waived.)</p> <p>16 (The deposition was concluded at</p> <p>17 approximately 11:48 AM.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 I, Sherri L. Bessery, RMR, CRR, Notary Public</p> <p>4 within and for the State of Vermont, do hereby certify</p> <p>5 that I reported the foregoing deposition of Emily</p> <p>6 Phillips, taken on July 29, 2021.</p> <p>7 I further certify that said witness was duly sworn</p> <p>8 to tell the truth, the whole truth and nothing but the</p> <p>9 truth, and that the foregoing was taken by me</p> <p>10 stenographically and thereafter reduced to writing,</p> <p>11 and the foregoing 74 pages are a full and true copy of</p> <p>12 said testimony to the best of my ability.</p> <p>13 I further certify that I am in no way related to</p> <p>14 any parties hereto nor interested in the outcome of</p> <p>15 said cause.</p> <p>16 Dated at Burlington, Vermont, this 31st day of</p> <p>17 July 2021.</p> <p>18</p> <p>19</p> <p>20 Sherri L. Bessery, RMR, CRR</p> <p>Notary Public 157.0001089</p> <p>Commission Expires 1/31/23</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

20 (Pages 74 to 75)